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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)

)
Amendment of the Commission's)
Rules To Establish New)
Personal Communications)
Services)

GEN. Docket No. 90-314
E.T. Docket No. 92-100

**REPLY COMMENTS OF
MOULTRIE INDEPENDENT TELEPHONE COMPANY,
NUSHAGAK TELEPHONE COOPERATIVE INC.,
AND STATE LONG DISTANCE TELEPHONE COMPANY**

Moultrie Independent Telephone Company, Nushagak Telephone Cooperative Inc. and State Long Distance Telephone Company (collectively referred to as "MN&S"), by their attorneys, hereby reply to the comments submitted on November 9, 1992 in the above-captioned proceeding.¹

I. INTRODUCTION AND BACKGROUND

MN&S are all small independent telephone companies located in and serving rural areas of the United States. Their operations range in size from 645 to 5,074 access lines. Nushagak Telephone Cooperative Inc. is the only one of the three organized as a subscriber-owned cooperative. MN&S desire to implement personal communications services ("PCS") in their respective service areas, assuming the rules ultimately adopted by the Commission in

¹See Notice of Proposed Rulemaking and Tentative Decision (FCC 92-333), GEN. Dkt. No. 90-314, E.T. Dkt. No. 92-100 (released Aug. 14, 1992) ("Notice"). In a subsequent order, the Commission extended the deadline for filing replies to Jan. 8, 1993. See Order Extending Time for Reply Comments (DA 92-1600) GEN. Dkt. No. 90-314, ET Dkt. No. 92-100 (released Nov. 24, 1992). MN&S have not previously submitted comments in this proceeding.

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this proceeding permit such a step. Indeed, MN&S urge the Commission, in furtherance of the public interest, to assure MN&S and other similarly situated telephone companies a full operational role in PCS in their exchange service areas.

MN&S applaud the Commission's proposal to allocate spectrum for PCS and hope the ubiquitous Commission will quickly move forward to bring PCS to the marketplace on a widespread basis. In fashioning rules to govern PCS, MN&S urge the Commission to remain mindful of the unique characteristics and requirements of rural America.² As commenters in this proceeding have indicated, the costs of serving sparsely populated areas by means of landline facilities are often high and sometimes prohibitive.³ If implemented properly, PCS will not only bring innovative, advanced wireless technologies to rural communities, but will also decrease communications costs to many rural subscribers. The benefits of PCS in rural environments are likely to be manifold.

As shown below, commenting parties favoring the reservation of spectrum for rural exchanges served by small independent telephone companies demonstrate that such an approach would permit LECs to best meet the PCS needs of the exchanges and communities they serve. Such an approach would also avoid the abuses inherent in the cellular lottery system which in actuality disadvantaged small, independent telephone companies and their subscribers. If the Commission declines to reserve spectrum by exchange for small LECs, it

²The Commission has recognized the special needs of rural communities--and local exchange carriers ("LECs") serving those communities--frequently in other proceedings. See, e.g., Comments of the United States Telephone Association ("USTA"), at 23-25; and Comments of the Rural Independent Coalition, at 2-4.

³See, e.g., Comments of Clear Creek Mutual Telephone Company, Mollalla Telephone Company, Monitor Cooperative Telephone Company, Monroe Telephone Company, Mt. Angel Telecommunications, Inc., Pioneer Telephone Cooperative, Scio Mutual Telephone Association and Yelm Telephone Company, at 3-4 ("Clear Creek, et al.").

should ensure that the PCS licensing process--unlike cellular--is equitable. Such assurances may require further examination by the Commission of the abuses described below by MN&S.

Finally, the commenting parties demonstrate that the public interest would be best served by a scheme which promotes the maximum number of service providers and utilizes as its service areas the existing cellular license areas.

II. PCS SHOULD BE IMPLEMENTED WITH A MAXIMUM NUMBER OF SERVICE PROVIDERS

In its Notice, the Commission states that its goal is "to provide an allocation that allows for the provision of the widest range of PCS services at the lowest cost to consumers." Notice at para. 34. MN&S agree with this goal. It supports the authorization of four or five PCS operators per market, but urges that one of these allocations be set aside for LECs, nationwide.

MN&S endorse the Comments of the National Rural Telecom Association and the Organization for the Protection and Advancement of Small Telephone Companies ("NRTA and OPASTCO") insofar as they urge authorization of five service providers in each service area.⁴ Five PCS providers per service area should maximize competition, leading to both more diverse and lower priced service offerings for the benefit of the public.

⁴See, e.g., Comments of NRTA and OPASTCO, at 4-5; and Comments of Roseville Telephone Company ("RTC"), at 6-7.

III. PCS SPECTRUM SHOULD BE RESERVED BY EXCHANGE FOR SMALL AND RURAL TELCOS

MN&S support those comments which favor reserving a specific block of frequencies for rural exchanges served by small independent telephone companies.⁵ These companies would be able to take advantage of such spectrum reservations to meet the PCS needs of their own exchanges and the communities they serve.

For example, Clear Creek et al. propose that PCS licenses be made expressly available for rural areas and populations of 10,000 or less.⁶ Clear Creek et al. further propose that rural area licenses be granted "upon request of the local telephone company providing service in the rural area."⁷ NRTA and OPASTCO as well as USTA advance similar proposals. MN&S strongly support such proposals since they would ensure that small and rural telephone companies would be able to implement PCS in their own service territories.

These proposals would ensure the rapid, efficient deployment of PCS in rural and small town areas of our country. In addition, the proposals, if implemented, would ensure that rural areas receive PCS since the LECs serving rural communities may be the only entities willing to invest in and provide PCS to such communities.

The Commission could implement such an approach by affording the small LEC a right of first refusal to offer PCS within its exchange. If the LEC declined to provide PCS,

⁵See, e.g., Comments of NRTA and OPASTCO, at 14; RTC, at 5-7; Clear Creek, et al., at 6; and USTA, at 25.

⁶Comments of NTCA, at 4; Comments of Clear Creek, et al., at 6.

⁷Comments of Clear Creek, et al., at 6.

the exchange could then be included as part of a larger RSA to be awarded to qualified entities through the FCC licensing process.

The approach MN&S support must be distinguished from that put forward by the National Telephone Cooperative Association ("NTCA") and others.⁸ NTCA proposes that a frequency block be reserved for each RSA where an LEC provides service. This is similar to the licensing scheme used for cellular licensing in the RSAs. Since an RSA often subsumes multiple exchanges served by different LECs, NTCA's proposal would not result in a reserved allocation for each independent LEC in its own exchange. As shown below, this system was flawed and subject to abuses.

IV. IF SPECTRUM IS NOT RESERVED BY EXCHANGE FOR SMALL AND RURAL LECs, THE COMMISSION SHOULD ENSURE THAT THE PCS LICENSING PROCESS IS EQUITABLE

Absent the Commission reserving spectrum to accommodate a rural LEC's specific exchange, MN&S alternatively support the adoption of safeguards to ensure a reasonable and fair licensing mechanism.⁹ Unless rural LECs are assured the ability to provide PCS in their own exchanges, MN&S is concerned that the licensing process--if it at all resembles the lottery process used to award cellular licenses--will yield results that discriminate against and disadvantage small independent telephone companies.

For example, State Long Distance Telephone Company ("SLD") experienced first-hand how the MSA lottery and settlement process was subject to manipulation by large and powerful companies to exclude small independent telephone companies from participating in

⁸See, e.g., Comments of NTCA, at 3.

⁹MN&S, like many rural telephone companies, oppose the use of auctions since such an approach would allocate licenses in accordance with an entity's ability to pay, not necessarily in accord with the public interest.

RSA cellular operations, including, of course, their own exchanges. Specifically, SLD was effectively excluded from the settlements process by larger companies with greater financial resources. Indeed, SLD was forced to watch as 15 wireline providers (which included Ameritech and GTE) allocated among themselves territories and cellular markets in Wisconsin that included 8 MSAs plus surrounding territories including RSAs.

By forming MSA partnerships before the RSA process was conceived, the larger wireline participants received cumulative chances to win the RSA lottery and become cellular service providers. Thus, each party to the agreement forfeited rights in the RSA and obliged itself to file separate applications for permits to construct cellular mobile phone systems in each RSA in which it had a presence. Each of such partnership-participant's chances in each lottery were multiplied by the number of parties in each agreement. In contrast, small, wireline LECs which were excluded from the MSA agreements because they had no MSA presence were only able to file a single RSA application in the single RSA in which they were eligible, yielding only one chance to win in each lottery. Furthermore, each of the partnership-participants also agreed either not to compete for a permit in certain areas or not to receive a specific interest in a particular cellular service partnership, in exchange for the promise that it be exclusively allowed to pursue a permit or take a certain share in a different area or partnership.

Moultrie Independent Telephone Company ("Moultrie") faced virtually the same hurdle when it filed an application in the wireline cellular lottery held for its sole RSA in Illinois. Moultrie served subscribers in an RSA which is virtually surrounded by four MSAs. In an effort to implement cellular service, Moultrie had investigated and devised

comprehensive engineering and operational plans, explored management service providers, and stood ready and able to begin construction and system operation. However, five larger entities operating in MSAs surrounding Moultrie's RSA (including Ameritech), formed a partnership which, in turn, embraced settlement agreements not only for purposes ordained by the Commission, but also to carve up territories and allocate shares and duties pertaining to multiple MSAs and RSAs throughout Illinois. The clear aim of the partnership was to tie up all interests throughout the central Illinois area, including Moultrie's exchange.

Not only did the settlement agreement provide the participants with cumulative chances to win the lottery, but it also served to conquer and divide the telco RSA community of interest. As is typically the case with such arrangements, Moultrie, a small, independent telephone company, was effectively precluded from participation.¹⁰

These are just two specific examples of manipulation of the cellular lottery process by larger, established carriers to exclude small independent telephone companies from participating in cellular service. Nushagak too was foreclosed from its exchange area, let alone the entire RSA as a result of a large LEC gaining control of the RSA; GTE won the lottery by itself. MN&S submit that these anticompetitive practices, which were promoted by the cellular lottery process and occurred on a widespread basis, are inconsistent with the Commission's goals in this proceeding to establish a diverse competitive marketplace for the provision of PCS. Moreover, these anticompetitive practices delay the implementation of service to rural communities; increase the Commission's burden of overseeing and examining

¹⁰Moultrie did not receive an offer from the partnership until after contracts and agreements had been formally executed without their inclusion. And this offer was on a "take it or leave it basis." Even then, Moultrie was asked to make a substantial financial commitment, one which was out of line with the proffered share of the aggregated service areas.

such arrangements in cases of abuse; increase the likelihood that rural service needs will not be met; and increase telecommunications costs to rural consumers.

Thus, MN&S support the adoption of a reformed lottery procedure to award PCS licenses. Absent the reservation of spectrum to accommodate an LEC's specific exchange, the Commission must otherwise ensure that the anticompetitive abuses described above are not allowed to reoccur under any revised lottery process. MN&S submits that should the Commission adopt a lottery approach without a spectrum reservation by exchange for small LECs, further Commission investigation into the cellular lottery abuses discussed herein is necessary.

V. THE COMMENTING PARTIES SUPPORT THE ADOPTION OF THE EXISTING CELLULAR SERVICE AREAS AS PCS SERVICE AREAS, SUBJECT TO A SERVING LEC RIGHT OF FIRST REFUSAL

MN&S agree with the vast majority of commenting parties that the existing cellular service areas (i.e., the RSAs and MSAs) should be adopted as the PCS service areas.¹¹

Commentors supporting the use of MSAs and RSAs for PCS service areas advance overwhelming arguments in support of this option. Cellular MSAs and RSAs, according to the commenting parties, would serve the public interest in the following ways:

- By using licensed areas that are designed specifically for licensing and are well understood by service providers, regulators, and the financial community;
- By promoting the provision of competitive, diverse PCS services which would include opportunities for small businesses;
- By focusing upon special local requirements and needs; and

¹¹See, e.g., Comments of BellSouth, at 30-39; Department of Justice ("DOJ"), at iii; USTA, at 19; RTC, at 11; Clear Creek, et al., at 5; NRTA and OPASTCO, at 10; Rural Independent Coalition, at 14-15; and US Sprint, at 7.

- By speeding delivery and implementation of service, particularly in rural areas.

Moreover, the DOJ supports service areas coterminous with cellular MSAs and RSAs since such an approach would "create the greatest possibility that the licenses would come to be held by operators with the intention, financial resources and expertise to develop services that meet what might be quite varied local consumer demand."¹² However, within each serving area (MSA or RSA) each LEC should be granted by rule a right of first refusal to provide PCS within their exchange service area boundaries.

By contrast, embracing larger service areas would undermine the benefits described above and would not be in the public interest. Nationwide licensing, supported by, for example, MCI,¹³ would be the least beneficial and desirable alternative. As BellSouth persuasively argues, nationwide licensing would not only minimize the number of U.S. companies involved in PCS development, but would also result in a lack of responsiveness to local needs as well as reduce service diversity.¹⁴

¹²Comments of DOJ, at iii.

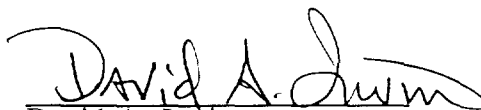
¹³See, e.g., Comments of MCI, at iii.

¹⁴See Comments of BellSouth, at 37-38; see also Comments of US Sprint, at ii, 7.

VI. CONCLUSION

For the reasons described above, MN&S urge the Commission to adopt the approaches to the implementation of PCS advanced and endorsed herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Irwin". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

David A. Irwin
Thomas K. Crowe

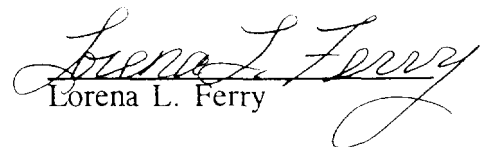
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January 8, 1993

CERTIFICATE OF SERVICE

I, Lorena L. Ferry, a secretary with the law firm of Irwin, Campbell & Crowe, do hereby certify that copies of the foregoing "Reply Comments of Moultrie Independent Telephone Company, Nushagak Telephone Cooperative Inc., and State Long Distance Telephone Company" were served this 8th day of January, 1993, by First Class Mail, postage pre-paid, upon all parties of record in the instant proceeding.


Lorena L. Ferry